

DOCUMENT # 3153
ADOPTED 3/23/89

EXHIBIT H
License Agreement

LICENSE AGREEMENT

by and between

THE BOSTON REDEVELOPMENT AUTHORITY

and

GUNWYN/ONE BOWDOIN SQUARE LIMITED PARTNERSHIP

This License Agreement is entered into as of < > day of < > 1989, by and between the Boston Redevelopment Authority, a public body politic and corporate organized under Chapter 121B of the General Laws of Massachusetts (hereinafter referred to as the BRA) and Gunwyn/One Bowdoin Square Limited Partnership, a Massachusetts Limited Partnership organized pursuant to the General Laws of Massachusetts (hereinafter referred to as Gunwyn).

W I T N E S S E T H:

WHEREAS, Gunwyn is the owner of Parcel 2B shown on a plan entitled "Government Center Project, Mass. R. 35" together with a fee interest to the centerline of New Chardon Street, Bulfinch Place and Mayhew Way (now Brattle Way) and a certain permanent easement in Bulfinch Place for access to Parcel 2B, known as One Bowdoin Square (formerly 15 New Chardon Street), Boston, Massachusetts (the Premises), by deed dated May 15, 1987, recorded with the Suffolk County Registry of Deeds in Book _____, Page _____, and

WHEREAS, the BRA is the fee owner by Order of Taking, dated December 12, 1968, and recorded with the Suffolk County Registry of Deeds at Book 8250, Page 148 of Parcel 2A, shown on a plan entitled "Government Center Project, Mass. R. 35", which Parcel is adjacent to the southwest side of the Premises (the Park), and

WHEREAS, the BRA is seeking ways to share the responsibility for the long term management of the Park with Gunwyn and other abutting property owners (the Abutters' Group), and

WHEREAS, pursuant to the Development Impact Project Agreement, dated October 13, 1987, between the BRA and Gunwyn, Gunwyn agreed to use its best efforts to form a coalition of abutters to insure that the Park will be maintained to the highest standard and to guarantee the greater of 50% of the cost of such maintenance or \$20,000 per annum, and

WHEREAS, Gunwyn desires to make certain temporary improvements to the Park in order to make it more attractive and welcoming to the public; and

WHEREAS, the BRA is interested in facilitating Gunwyn's efforts to improve and maintain the Park and is also interested in enabling Gunwyn to develop and manage programming for the Park if Gunwyn so desires, and

WHEREAS, the BRA and Gunwyn intend to join in the application to the Edward Ingersoll Browne Fund of the City of Boston for up to \$ _____ in funds to enable more permanent reconstruction of the Park in accordance with plans to be approved by Gunwyn and the BRA, and

WHEREAS, the BRA and Gunwyn desire to cooperate to further the above-stated purposes in the public interest;

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties hereto agree as follows:

1. License to Construct Temporary Improvements. The BRA hereby grants Gunwyn a license to construct improvements to the Park in accordance with plans and specifications approved by the BRA. All such work shall be performed in a good and workmanlike manner and shall be made at no cost to the BRA. Gunwyn shall be responsible for ensuring that the Park shall at all times be free of liens for labor and material. Prior to the commencement of any such work and throughout the term of this Agreement Gunwyn will maintain or cause to be maintained the insurance required by Section 13 hereof.

2. Maintenance. The BRA hereby grants Gunwyn a license to enter the Park for the purpose of maintaining the Park. Gunwyn agrees to use its best efforts to form an Abutters' Group to maintain the Park. Maintenance duties may be performed by a private maintenance company hired by Gunwyn or the Abutters Group. Maintenance shall occur on a daily basis and shall include the following:

- plant maintenance, lawn maintenance, if any
- general maintenance and cleaning of fixtures
- sweeping, steam cleaning as needed
- replacement of light bulbs
- trash removal
- graffiti removal

- trashbag, supplies and related equipment
- security, if any.

3. Funding of Maintenance. Gunwyn will guarantee annual funding for not less than 50 percent of the costs of maintenance of the Park or \$20,000, whichever is greater, in accordance with the terms of Article 7 of the Development Impact Project Agreement dated as of October 13, 1987.

4. Utilities and Services. The BRA shall make or cause to be made all arrangements with governmental authorities and public utilities for the provision of all utilities and utilities services to the Park including without limitation, electricity, water and sewage. The BRA shall pay, or cause to be paid, as and when due, the expense of electricity for permanent lampposts in the Park and for the provision of water to decoration and drinking fountains in the Park, if any. As part of its maintenance obligation under Section 2 of this Agreement, Gunwyn shall pay, or cause to be paid, as and when due, the expense of all other utilities used in the Park.

5. Activities. Gunwyn or the Abutters' Group may conduct and manage activities within the Park including, without limitation, organizing, scheduling and regulating pushcarts and other vendors and sponsoring performances and other special events. Such activities shall be conducted in accordance with all applicable law, statutes, ordinances and regulations and with the goal of promoting the relaxation and enjoyment of pedestrians and office workers.

6. Vending Licenses. The BRA and Gunwyn shall consult and cooperate in the development of recommended standards for vending and other activities in the Park. The BRA shall join with Gunwyn in supporting the issuance of licenses and permits that are consistent with such agreed standards, by appearing at hearings before the appropriate licensing authorities and in any other suitable manner. The BRA shall further join in opposing the issuance of any licenses or permits that are inconsistent with such standards, including but not limited to any inconsistent licenses for hawkers, peddlers, itinerant vendors, musicians, commercial handbilling, advertising, solicitations, and sale and storage of merchandise.

7. Stage Area. Gunwyn or the Abutters' Group may apply to the appropriate licensing authorities of the City of Boston for a license or licenses to erect temporary and easily removable staging in the Park to be used for musical programs and other entertainment and special events open to the public. Gunwyn shall submit to the BRA in advance for its approval a copy of the application to be submitted to the licensing authority, which shall include information on the proposed design, location, and program for use of the stage. The BRA shall assist and support the issuance of any license, permit, or other City of Boston approval necessary for erection and operation of such a stage, and shall oppose the issuance of licenses for inconsistent activities in the vicinity of the stage, all as set forth in Section 6 of this Agreement.

8. Seating Area. The BRA hereby grants Gunwyn a license to maintain tables and chairs in the Park on the edge closest to the Premises for the benefit of patrons of any restaurant in the Premises and for use by the public. Gunwyn shall have the right to use lawful means to eject or cause to be ejected persons from the tables and chairs whose behavior is disruptive, destructive or unlawful but Gunwyn shall not be entitled to eject any person merely because such person is not a patron of any restaurant in the Premises.

9. Fees from Activities. Any fees collected by Gunwyn or the Abutters' Group from vendors or other commercial activities within the Park shall be applied to Gunwyn's share of the Park maintenance costs.

10. Duty of Care. Gunwyn and, when applicable, the Abutters' Group, shall use reasonable care to keep the Park in safe condition for ordinary Park related uses.

11. Ability to Close Park. Gunwyn, and when applicable, the Abutters' Group, will use reasonable efforts to keep the sidewalk portions of the Park clear of snow and ice, but will not be obliged to remove snow from the Park, and may, with the concurrence of the BRA, which shall not be unreasonably withheld, for purposes of public safety, from time to time close the Park to public access because of snow or other inclement weather conditions or because of requirements of maintenance or repair.

12. Indemnification. Gunwyn shall indemnify and save harmless the BRA, its members, officers and employees from and in connection with the employment or application for employment

against all suits, actions, claims, demands, damages, losses, and expenses, and costs of every kind and description to which the BRA may be subject to or put by reason of injury (including death) to persons or property in the Park resulting from any activities undertaken by or for Gunwyn under this Agreement. The BRA shall give notice to Gunwyn of any such suits, actions, claims, demands, damages, losses, expenses and costs.

13. Insurance. Gunwyn or, if applicable, the Abutters' Group, shall carry or require that there be carried Workmen's Compensation Insurance for all employees and those of its contractors and/or sub-contractors engaged in work at the Park, in accordance with the State Workmen's Compensation Laws. Gunwyn or, if applicable, the Abutters' Group, shall carry or require that there be carried Comprehensive Public Liability and Property Damage Liability Insurance with limits commercially available at reasonable cost to protect Gunwyn and its contractors or sub-contractors against claims due to accidents which may occur or result from operations under this Agreement. Such insurance shall cover the use of all equipment, hoists, motor vehicles or hauling materials or debris from the same. The premiums for such insurance shall be included as part of the maintenance obligation under Section 2 of this Agreement.

14. No Discrimination. All of the parties covenant and agree that they will not discriminate or permit discrimination upon the basis of race, color, sex, religion, age or national heritage in the use or occupancy of the Park or

in connection with the employment or application for employment of persons for the construction or maintenance of the improvements in the Park.

15. Assignment. At such time as an Abutters' Group is formed, this Agreement may be assigned to it by Gunwyn and the Abutter's Group shall assume all obligations of Gunwyn hereunder.

16. Recording. This agreement shall be recorded at the Suffolk County Registry of Deeds.

17. Term. This Agreement shall commence as of the date hereof and shall continue in force and effect from year to year unless terminated by either party giving 90 days' written notice to the other, by certified mail, return receipt requested or by hand delivery.

WITNESS, the execution hereof in counterparts under seal as of the date and year first above written.

Approved as to form:

BOSTON REDEVELOPMENT AUTHORITY

By: _____
General Counsel
Boston Redevelopment Authority

By: _____
Director

GUNWYN/ONE BOWDOIN SQUARE
LIMITED PARTNERSHIP

By: Gunwyn Development
Corporation,
General Partner

By: _____
President

MEMORANDUM

MARCH 23, 1989

TO: BOSTON REDEVELOPMENT AUTHORITY AND
STEPHEN COYLE, DIRECTOR

FROM: WILLIAM D. WHITNEY, ASSISTANT DIRECTOR FOR
URBAN DESIGN AND DEVELOPMENT
SCOTT R. FOWLER, ASSISTANT PROJECT MANAGER

SUBJECT: TEMPORARY IMPROVEMENTS TO GOVERNMENT CENTER
PARCEL 2A AT NO COST TO THE BOSTON REDEVELOPMENT
AUTHORITY

**EXECUTIVE
SUMMARY**

THIS MEMORANDUM REQUESTS AUTHORIZATION FOR THE DIRECTOR TO ENTER INTO A LICENSE AGREEMENT WITH THE GUNWYN COMPANY TO MAKE TEMPORARY IMPROVEMENTS TO GOVERNMENT CENTER PARCEL 2A.

The Gunwyn Company/One Bowdoin Square Limited Partnership requests approval of their proposal to make temporary improvements to Government Center Parcel 2A, also known as Cardinal Cushing Park, until such time as the parcel is permanently improved by the City with the support of the Browne Fund. Gunwyn is also requesting permission to use a sliver edge of the parcel closest to the One Bowdoin Square development for outdoor seating.

The parcel is owned by the Boston Redevelopment Authority and is bounded by New Chardon Street, Cambridge Street, and One Bowdoin Square. A site location map is attached as **EXHIBIT A**. The Gunwyn Company is the developer of the One Bowdoin Square project located at 15 New Chardon Street. One Bowdoin Square received a recommendation for approval of variances and a Conditional Use Permit and Development Impact Project approval from the BRA Board on September 10, 1987. The Board of Appeal granted, on October 15, 1987, a Conditional Use Permit and variances for Floor Area Ratio, Insufficient Rear Yard, Parapet Setback, and Off Street Parking.

The area is currently underused for several reasons. Walls serve as a barrier to those who may not wish to pass through because they cannot see through to the other side. The area also has a reputation for being unclean and rats live in the low-lying juniper bushes.

Gunwyn is proposing an interim plan to reconstruct the Park until such time as the Browne Fund park improvement project commences in 1991. The interim redevelopment of the Park would demolish the existing walls, replace the existing planters with new ones for seasonal flower plantings, replant the existing trees, resurface the existing walkways with brick, sod the remainder of

the park, and move the existing bust of Cardinal Cushing approximately five feet. In addition, a modified drainage system and a new irrigation system will be added. New benches will also be provided. A plan of the proposed interim Park is attached as **EXHIBIT B** and a plan of the existing conditions is attached as **EXHIBIT C**.

The proposed interim improvements to the Park have the support of the Browne Fund, and are planned so that the ability to permanently reconstruct the Park in the future will not be impaired by the temporary improvements proposed by Gunwyn. Further, some of the temporary improvements proposed herein will be included in the permanent improvements to the Park. Gunwyn and the Browne Fund are working together to identify such elements. A letter of from the Browne Fund is attached as **EXHIBIT D**. The Boston Arts Commission and the Archdiocese of Boston have reviewed the relocation of the Cardinal Cushing bust and are not in opposition. A letter from the Boston Arts Commission is attached as **EXHIBIT E** and a letter from the Archdiocese of Boston is attached as **EXHIBIT F**. The Boston Parks Department has also been involved in the review of Gunwyn's proposal and a letter from them is attached as **EXHIBIT G**.

Gunwyn is obligated, under Article 7 (Voluntary Maintenance Agreement of Cardinal Cushing Park) of its Development Impact Project Agreement dated October 13, 1987, to make annual payments to support the maintenance of the park. These payments equal the greater amount of 20,000 dollars or half of the total cost of maintenance. The obligations under the Maintenance Agreement will bind Gunwyn's successors-in-title.

The attached LICENSE AGREEMENT by and between THE BOSTON REDEVELOPMENT AUTHORITY and GUNWYN/ONE BOWDOIN SQUARE LIMITED PARTNERSHIP (**EXHIBIT H**) outlines the maintenance program for the Park.

The LICENSE AGREEMENT also stipulates that maintenance shall occur on a daily basis, and shall include the following:

- o plant maintenance, lawn maintenance, if any
- o general maintenance and cleaning of fixtures
- o sweeping, steam cleaning as needed
- o replacement of light bulbs
- o trash removal
- o graffiti removal
- o trashbag, supplies and related equipment
- o security, if any.

The LICENSE AGREEMENT also allows outdoor seating on the edge of the Park closest to the One Bowdoin Square building. Further, licensed pushcarts and performance staging may also be allowed provided that Gunwyn obtain the proper licenses from the appropriate licensing authorities for such activities.

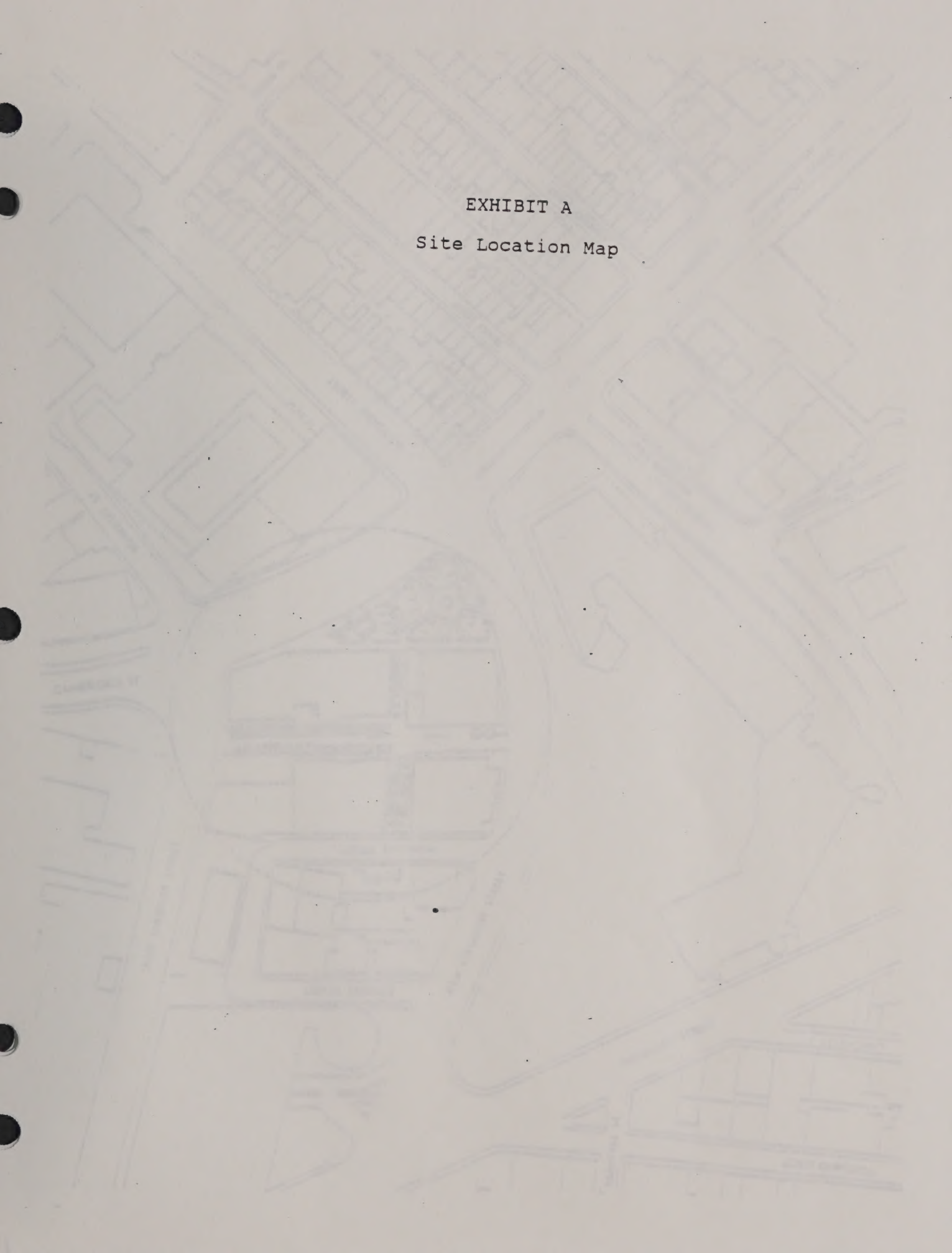
The LICENSE AGREEMENT indemnifies the BRA against all suits, actions, demands, losses, and expenses which the BRA may be subject to resulting from any activities undertaken by Gunwyn under this agreement. Gunwyn is also obligated to carry Comprehensive Public Liability and Property Damage Liability Insurance.

Gunwyn is also obligated through its Development Impact Project Agreement to use its best efforts to form an Abutters' Group to insure that Cardinal Cushing Park will be maintained to its highest standard.

Gunwyn anticipates occupation of One Bowdoin Square on May 15, 1989. The park renovation proposed herein is anticipated to be completed by June 1, 1989.

VOTED: That the Director is authorized to execute a License Agreement substantially in the form attached hereto for the temporary improvements to the Boston Redevelopment property known as Cardinal Cushing Park.

EXHIBIT A
Site Location Map



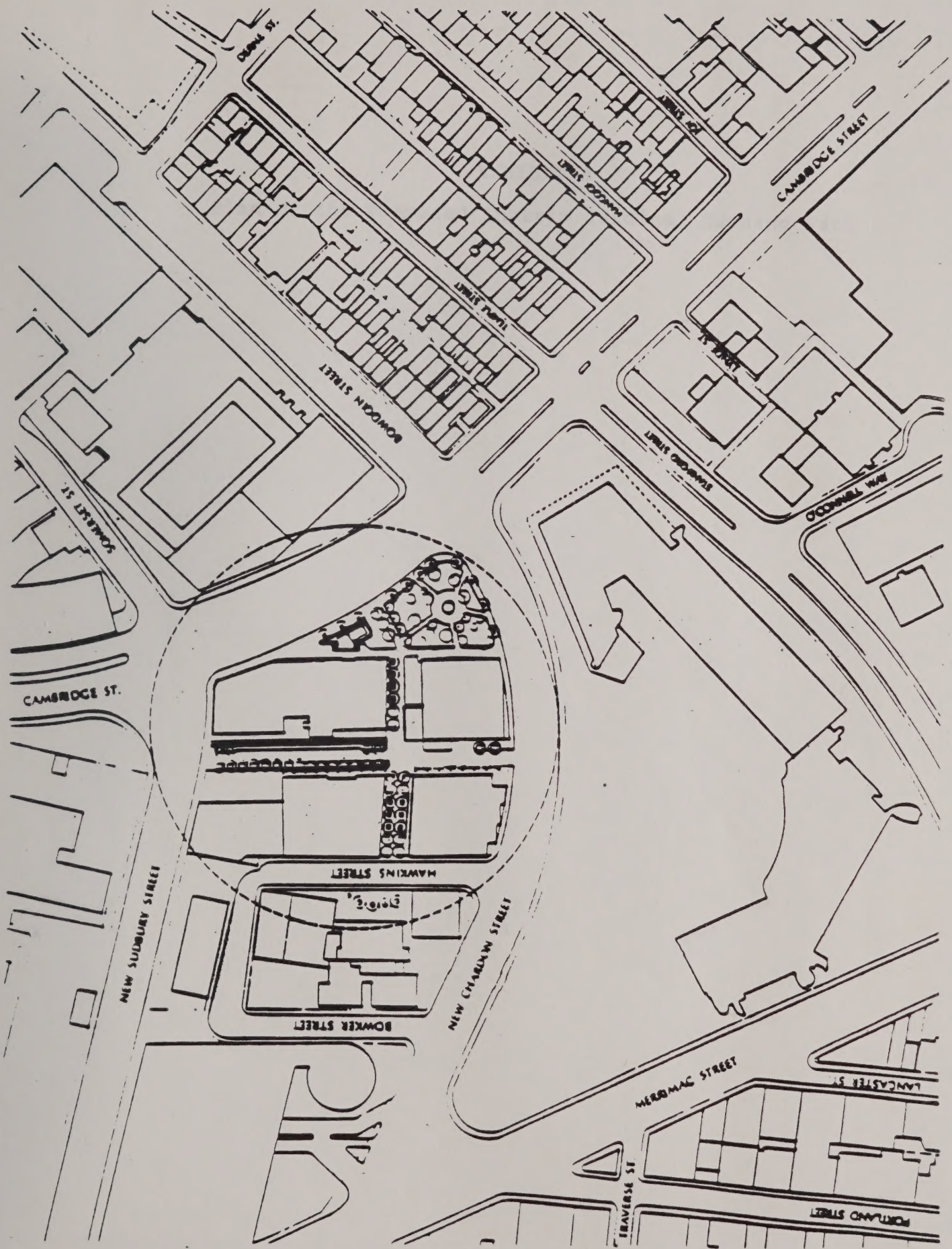


EXHIBIT B

Plan of the Proposed Interim Cardinal Cushing Park

NEW CHARDON STREET

(CMIE) BROWNIAN SCHIARIE

CAMBRIDGE STREET

[illegible]

PARTIAL - P. M. TING
RAN @ RUD

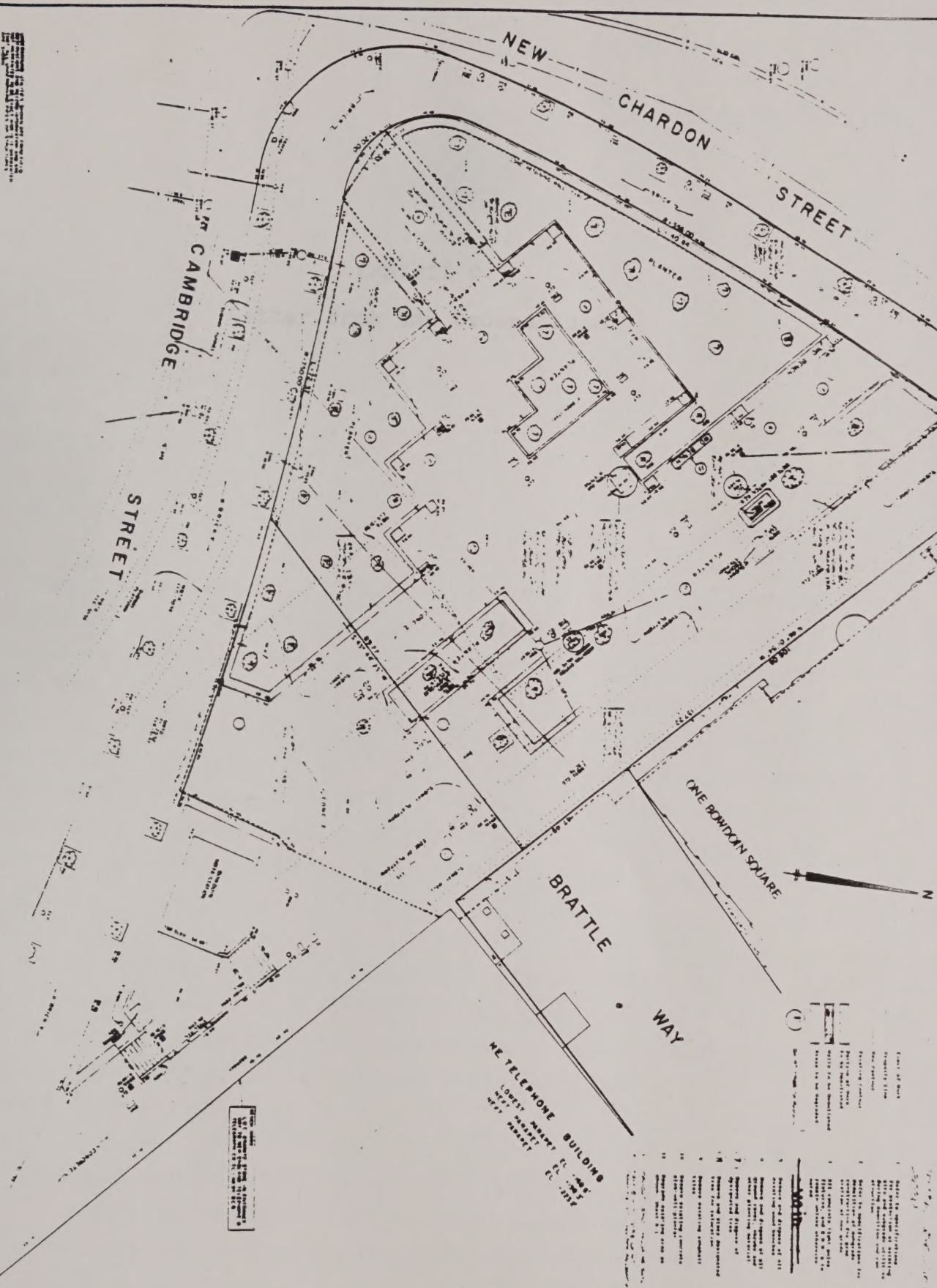
Notes on Appendix

SITE PLAN

AS.2

EXHIBIT C

Plan of the Existing Conditions at Cardinal Cushing Park



TOPOGRAPHIC PLAN of LAND

**15 NEW CHARDON STREET
BOSTON, MASS.**

PREPARED BY
R. E. CAMERON & ASSOCIATES, INC.
BOSTON, MASS.



March 20, 1962

EXHIBIT D

Letter from the Browne Fund

Stephen J. Brown, Director
Boston Redevelopment Authority
Boston City Hall
Boston, Mass 02201

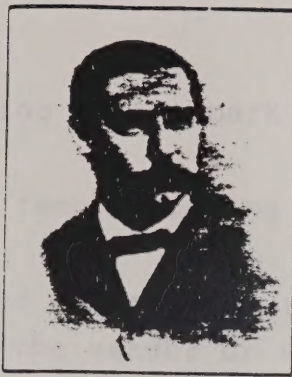
Dear Mr. Brown:

The Edward J. Brown Trust Fund has undertaken an extensive process to develop a new design for Cardinal O'Connor Park. Informative meetings have been held over the last 18 months between the fund and the park's architect, city agency representatives and a committee of associates of the Cardinal to develop a comprehensive design which ensures that this important landmark will be preserved and its value enhanced. It is our belief that the design is not intended to be a landmark but a landmark and we intend to honor the Cardinal's outstanding contributions.

It is the opinion of the staff of the Browne Fund that the interim design presented by Squyn Development Co. will not substantially interfere with the park's essential reconstruction. We will not oppose the interim design subject to the following conditions:

- 1. That in addition to those items referred to under maintenance in the license agreement between the EPA and the Squyn Company the following specifications are included:

EDWARD J. BROWN TRUST FUND COMMITTEE
Stephen J. Brown, Director
Boston Redevelopment Authority
Boston City Hall
Boston, Mass 02201



March 20, 1989

Edward I. Browne

Stephen Coyle, Director
Boston Redevelopment Authority
Boston City Hall
Boston, Mass 02201

Dear Mr Coyle:

The Edward Ingersoll Browne Trust Fund has undertaken an extensive process to develop a new design for Cardinal Cushing Park. Substantive meetings have been held over the last 18 months between the fund and the park's abutters, city agency representatives and a committee of associates of the Cardinal to develop a comprehensive design which ensures that this important site reflects favorably on the Cardinal and our city. This park's new design is not intended to be the domain of any one group or individual. It is intended to honor one of Boston's outstanding citizens.

It is the opinion of the staff of the Browne Fund that the interim design presented by Gunwyn Development Co. will not substantially interfere with the park's eventual reconstruction. We thus will not oppose the interim design subject to the following conditions:

1. That in addition to those items referred to under maintenance in the license agreement between the BRA and the Gunwyn Company the following specifications are included:

EDWARD INGERSOLL BROWNE FUND COMMISSION

Mayor Raymond L. Flynn, Chairman • Councillor Christopher A. Iannella, Vice-Chairman • Collector-Treasurer Lee F. Jackson
City of Boston • Boston City Hall c/o The Environment Department • Boston, Massachusetts 02201 • 617/725-3850 or 4416
City of Boston Trust Office, Boston, Massachusetts 02201 • 617/725-3414

- a. Daily steam cleaning of the park during peak useage periods.
(June 1 - Oct 1).
 - b. Twice daily trash removal during peak useage periods
(June 1 - Oct 1).
 - c. That costs incurred under items (a+b) are the sole
responsibility of the vendor or vendors making use of the
park.
2. That benches and brickwork adhere to those specifications
outlined for the park in the design guidelines supplied by
the Browne Fund's architect (CBT).
 3. That all events in the park be of good taste
and be held in such a manner as not to detract from the
park's primary purpose as a memorial to Richard Cardinal
Cushing.

The Browne Fund wishes to commend the BRA for its diligence in
assuring that this park is maintained to a high standard. We look
forward to working with the Authority in completing the park's
reconstruction.

Sincerely,

Robert J. Fleming
Acting Executive Sec.
Trust Office

FROM THE BOSTON
PUBLIC LIBRARY
ASTOR LENOX TILDEN FOUNDATION
1900



OFFICE OF THE ARTS AND HUMANITIES

BOSTON ART COMMISSION

Boston City Hall — Room 803
Boston, Massachusetts 02201
617-725-3245

RAYMOND L. FLYNN
MAYOR

BRUCE P. ROSSLEY
COMMISSIONER

20 March 1989

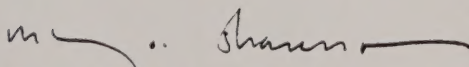
William Whitney, Assistant Director
Urban Design and Development
Boston Redevelopment Authority
Boston City Hall
Boston, MA.

Dear Mr. Whitney:

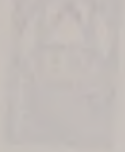
At its regular meeting on March 2, 1989, the Boston Art Commission considered the issue of relocating the bust of Cardinal Cushing within the newly designed Cushing Park. It is the Commission's understanding that the Park which has been designed by Graham Gund Architects, Inc., developers of One Bowdoin Square abutting the Park, is planned as a temporary design until the renovation of the Park which is expected to be jointly funded by the Browne Fund and the MBTA is begun. The Art Commission agreed to the proposed relocation of the artwork to the approximately "one o'clock" position in the central circular plaza as noted on the Gund Architects site plan of February 24, 1989.

In reviewing the site plan the Commissions mentioned another issue which while it may not technically come under the designation of public art certainly affects the presentation of public art in any setting. They noted that there are no trash receptacles provided in this plan and wondered whether or not there are provisions for these items. If these are to be included they should be shown on the plan and should be integrated into the design of the park. The prospect of a park where people will certainly gather to eat or socialize without the accessibility of a place to discard trash does not bode well for the appearance of the site nor consequently of the Cardinal's portrait bust within it.

Sincerely,



Mary O. Shannon
Executive Secretary
Boston Art Commission



PLANNING OFFICE FOR URBAN AFFAIRS

Archdiocese of Boston

EXHIBIT F

Letter From the Archdiocese of Boston

Mr. Stephen Coyle

Director

Boston Redevelopment Authority

One City Hall Square

Boston, MA 02101

Dear Mr. Coyle:

This letter is sent in support of the Cardinal's ongoing mission plan for the renewal of the park space in downtown Boston.

The Planning Office has reviewed the plan presented to it by the Urban Development Co. and find that while the plan is commendable, we would like to be more involved with the plan. We are being developed by the Urban Development Co. and we are being developed by the Urban Development Co. and we are being developed by the Urban Development Co.

If there is anything else we can do to help, please let us know. We are being developed by the Urban Development Co. and we are being developed by the Urban Development Co.

Michael J. Coyle

Michael J. Coyle



PLANNING OFFICE FOR URBAN AFFAIRS

Archdiocese of Boston

25 Union Street • Boston, Massachusetts 02108 • Tel. 227-2200 • Rev. Michael F. Groden, Director

March 7, 1989

Mr. Stephen Coyle
Director
Boston Redevelopment Authority
One City Hall Square
Boston, MA 02111

Dear Mr. Coyle:

This letter is sent in support of the Cardinal Cushing Interim plan for the renewal of the park space on Cambridge Street.

The Planning Office has reviewed the plans presented to us by the Gunwyn Development Co. and find them quite satisfactory. We would like to be more involved with the final plans being developed by the Brown Fund as they move along and we were pleased to hear that the interim plan is not detrimental to future efforts.

If there is anything else we could do to move this interim plan forward, please do not hesitate to call on us.

Sincerely yours,

Michael F. Groden

MFG/jdb

Boston

EXHIBIT G

Letter from the Boston Parks Department

Mr. [Name]
[Address]
[City, State, Zip]

Dear Mr. [Name]:

The Boston Parks Department has received your letter of [Date] regarding [Topic]. We are sorry to hear that you are having trouble with [Issue]. We will do our best to resolve this problem for you as quickly as possible.

One of our [Title] is currently working on your case. We will contact you again once a decision has been reached. In the meantime, we suggest that you [Action].

We appreciate your patience and understanding. If you have any further questions, please do not hesitate to contact us.

Sincerely,
[Signature]

[Name]
[Title]
Boston Parks Department

cc: [Name]

Boston

March 22, 1989

Mr. Stephen Coyle
Director
Boston Redevelopment Authority
One City Hall Square
Boston, MA. 02111

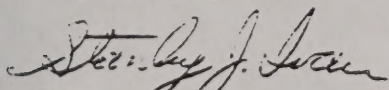
Dear Mr. Coyle:

The Boston Parks and Recreation Department has reviewed the plans of Cardinal Cushing Park by the Gunwyn Development Company, and can lend its support to this project; providing it is of a temporary nature, and will be followed by the permanent design and construction of the park by BRA, C.B.T., and the Browne Fund.

One of our concerns is to insure a continued high standard of maintenance during the temporary improvements and after the permanent improvements have been completed. We can not emphasize enough the importance of negotiating a perpetual maintenance agreement that would keep this park in a safe, clean and appealing condition.

The Boston Park and Recreation Dept. is looking forward to continuing to work with your agency on this very important project.

Very truly yours,



Stanley J. Ivan
Chief Engineer

SJI/mh



Raymond L. Flynn, Mayor/PARKS AND RECREATION DEPARTMENT/Boston City Hall/City - Bldg. Plaza 02

